

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Implementation of the Pay Telephone)	CC Docket No. 96-128
Reclassification and Compensation)	
Provisions of the)	
Telecommunications Act of 1996)	

**COMMENTS OF SPRINT CORPORATION
ON PETITIONS FOR RECONSIDERATION
AND CLARIFICATION**

**John E. Benedict
H. Richard Juhnke

SPRINT CORPORATION
401 Ninth Street, NW
Suite 400
Washington, DC 20004
202-585-1900**

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SUMMARY

In these comments, Sprint opposes, in whole or part, the petitions filed by the RBOC Coalition, APCC, and ITC^DeltaCom. Sprint generally supports WorldCom's petition.

The RBOC Coalition petitions the Commission to reconsider use of IRS rates for calculating interest. Instead, it asks to retain the inflated cost-of-capital rate for the revenues PSPs will receive from IXCs, while applying lower IRS interest rates to refunds that PSPs owe to IXCs. Sprint opposes this request. The Commission acted reasonably and fairly in adopting standard IRS rates for all payphone obligations. The RBOC Coalition also challenges the January 1, 2003 effective date of the *Fourth Recon. Order*, asking that the Commission allow IXCs only 30 days to calculate and distribute any net payphone compensation funds. Sprint believes the *Fourth Recon. Order's* effective date is not an issue, since payments will not be made until after a subsequent order determines how compensation should be allocated. However, 30 days to manage the task of payphone compensation is grossly unrealistic. Finally, the RBOC Coalition asks the Commission to reconsider its use of estimates to calculate Interim Period compensation. Sprint generally agrees, because the Commission's estimates are flawed and because actual data from an immediately subsequent period provides the most accurate and fair means of determining Interim Period compensation.

APCC's petition challenges the Commission's removal of the \$0.009 cost element from the per-call rate. Sprint opposes APCC's petition. This element is inflated, and Sprint agrees with the Commission that it is unnecessary because IRS interest provides

full compensation. APCC also seeks an order directing the IXC industry to determine the net amount owed to each PSP. The Commission should deny this request. The process would be unworkable, costly, and inefficient, and the responsibility belongs to PSPs. APCC also petitions the Commission to deny IXCs their right to offset amounts they are owed by PSPs against any amounts they will be paying them. However, the right of offset is widely recognized and consistent with prior Commission practice.

ITC^DeltaCom petitions to avoid paying its first-year Interim Period obligation. It claims that it assumed it would not face this requirement, even after the Illinois court held that small IXCs could not be exempted. It also contends that the *Fourth Recon. Order's* removal of the exemption is retroactive ratemaking. Sprint disagrees. On this issue, the Commission's order is lawful, and indeed was mandated by Illinois. Moreover, ITC^DeltaCom -- like all small IXCs -- was on notice that it could (and likely would) be responsible for paying first-year Interim Period payphone compensation.

WorldCom's petition asks the Commission to (1) reconsider its use of inflated default estimates, (2) allow sufficient time for IXCs to calculate and administer compensation once any allocation order issues, and (3) clarify that the same Intermediate Period compensation rate applies for all compensation whether paid on a per-line or per-call basis. Sprint supports WorldCom's petition on these issues.

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I. INTRODUCTION

Sprint Corporation opposes, in whole or part, the petitions filed by the RBOC Payphone Coalition ("RBOC Coalition"), American Public Communications Council, Inc. ("APCC"), and ITC^DeltaCom Communications, Inc. ("ITC^DeltaCom") for reconsideration and clarification filed of the *Fourth Order on Reconsideration and Order on Remand* ("*Fourth Recon. Order*" or "*Order*"). Sprint generally supports the Petition for Reconsideration and Clarification filed by WorldCom, Inc.¹

¹ These petitions for reconsideration and clarification of the Commission's *Fourth Order on Reconsideration and Order on Remand*, CC Docket No. 96-128, FCC 02-22 (rel. Jan. 31, 2002) were filed on April 3, 2002 by the RBOC Coalition, APCC, ITC^DeltaCom, and WorldCom. Sprint also filed a petition for consideration and clarification in this docket. The Commission published notice of the petitions in the Federal Register on April 16, 2002. 67 Fed. Reg. 18617.

II. THE RBOC PETITION SHOULD BE DENIED.

A. The Commission Properly Adopted IRS Overpayment Rates for Interest on Interim Period Obligations.

The RBOC Coalition challenges the interest rate applicable to the Interim Period, but only for compensation that IXC's may owe to PSP's. RBOC Petition at 4. The Coalition wants the Commission to utilize an 11.25% cost of capital rate, instead of applying interest at market-based IRS overpayment rates. At the same time, the RBOC Coalition wants the lower IRS overpayment rates applied to amounts that PSP's owe to IXC's. Id. at 6.

The RBOC Coalition's position, best described as "heads I win, tails you lose," is plainly indefensible. The Coalition concedes that interest at IRS overpayment rates should apply to the refunds owed by PSP's to IXC's, because they reflect the time value of money and are intended "to avoid unjust enrichment to the party holding money owed to another carrier." RBOC Petition at 5, quoting *Fourth Recon. Order* at ¶ 33. Yet the Coalition argues that the same time value of money is a capital cost for PSP's, because "LEC PSP's have been forced to incur increased capital costs" to replace those moneys over time. Id. The distinction is obviously strained, because of course IXC's have faced the very same impact by the PSP's' holding of Intermediate Period refunds owed to IXC's.

The Commission properly determined that the LEC capital cost is "inappropriate" to use in a one-time "true up." *Fourth Recon. Order* at ¶ 33. The use of IRS overpayment rates is consistent with past precedent and, Sprint believes, compelled by past policy. Id. at ¶ 32. Sprint also agrees with the Commission that it would make no sense, and it would certainly be unfair, "for a company that will both receive some money

and pay some money to receive interest at one rate, but pay it at another rate." *Id.* at ¶ 33. And an 11.25% rate is certainly excessive.²

B. The Commission Need Not Address the Effective Date of the *Fourth Recon. Order*.

The RBOC Coalition questions the ostensible January 1, 2003 effective date of the *Fourth Recon. Order* and argues that the effective date of the anticipated, future order settling payphone compensation for the Interim Period should "require immediate payments by carriers." RBOC Petition at 7.

Sprint does not know why the Federal Register notice carried an effective date, when the *Fourth Recon. Order* itself did not. Regardless, since the Commission has not yet decided the basis for payments for the Interim Period, the effective date noted in the Federal Register is really meaningless. As the Coalition acknowledges, the effective date is a matter to be addressed in a subsequent order addressing the allocation of Interim Period payments among carriers. *Id.* There is no need for the Commission to address the issue in the context of reconsideration of the *Fourth Recon. Order*.

Nevertheless, as Sprint explains below in its support of WorldCom's petition (see p. 18, infra), in setting an effective date for any future order allocating payphone compensation, the Commission must allow sufficient time to manage the task of determining what amounts are to be paid to, or refunded from, each PSP. The RBOC Coalition's suggestion of 30 days is grossly unrealistic.

² Sprint, AT&T, and WorldCom have explained in response to the RBOCs' August 8, 2000 proposal, that the 11.25% "penalty" interest rate used for other payphone compensation payments is unjustified. See Sprint Comments at 5 (Oct. 20, 2000), WorldCom Comments at 12 (Oct. 20, 2000), and AT&T Reply at 7 (Oct. 31, 2000). The required payments are not the result of any party's default in an established legal obligation, and the payments and true-ups will involve money flows in both directions.

C. The Commission Should Reconsider Using Actual, not Estimated, Data to Determine Interim Payphone Compensation.

The RBOC Coalition notes that the *Fourth Recon Order* follows "the same basic approach to interim compensation" originally set out in the *First Payphone Order*. RBOC Petition at 3-4. The Commission estimated a compensation obligation per payphone, and then attempted to allocate payment responsibility among carriers.

That approach -- which the D.C. Circuit rejected in Illinois³ -- is fundamentally flawed. To make matters worse, as Sprint explained in its own petition for reconsideration, the Commission is basing its calculations on arbitrary, unreliable, and inflated "estimates" for the number of compensable calls per payphone. Sprint Petition at 4-5. And although allocation is not addressed by the *Fourth Recon. Order*, the Commission's per-payphone approach provides no reliable or fair basis for allocating the compensation obligation among carriers, and can be either unfair or over-generous to particular PSPs as well.

Sprint agrees with the RBOC Coalition that "the Commission should consider whether different approach to these issues is appropriate." RBOC Petition at 3. Although Sprint disagrees on some details, Sprint certainly agrees in concept that it "makes more sense to impose an obligation for the interim period based on compensation

³ Illinois Pub. Telecoms. Ass'n v. FCC, 117 F.3d 555 (D.C. Cir. 1997) (subsequent history omitted).

obligations actually incurred for a subsequent, 'corresponding' period." *Id.* at 3-4. Sprint has consistently argued that the fairest and most reasonable approach to interim payphone compensation would utilize carriers' actual call data for the immediately following period.⁴ See also Reply Comments of Sprint Corp. (Oct. 30, 2000) at 3-4.

The RBOCs are the parties that presumably stand to receive the lion's share of interim payphone compensation. They also have claimed to be the parties most frustrated by the Commission's delays in handling payphone compensation issues. The fact that they voice doubts about the per-payphone methodology -- even at this late hour -- only underscores the weaknesses of the *Fourth Recon. Order* and the Commission's per-line approach. Sprint agrees with the RBOC Coalition that the Commission should reconsider its reliance on estimates. As Sprint explained the Commission's estimates are arbitrary and based on flawed data and faulty mathematics. Sprint Petition at 3-10.

III. THE APCC PETITION SHOULD BE DENIED.

A. The Commission Properly Removed the \$0.009 Cost Element Applicable to Retroactive Adjustments of Compensation

APCC asks the Commission to re-impose the \$0.009 rate element set in the *Third Payphone Order*,⁵ which APCC claims is necessary to compensate PSPs for a presumed four month payment delay inherent in the dial-around compensation process. APCC Petition at 4. Sprint opposes APCC's request. Removing the \$0.009 element does not

⁴ Any use of subsequent periods for interim compensation would depend on whether valid and timely claims were filed. Sprint agrees with WorldCom that, with the possible exception of inmate phones, there is no basis for allowing retroactive claims beyond the normal one-year period. WorldCom Petition at 4-5.

⁵ *Third Report and Order and Order on Reconsideration of the Second Report and Order*, 14 FCC Rcd. 2545 (1999) (subsequent history omitted) at ¶ 189.

"unjustly enrich" IXCs. *Id.* at 8. Retaining it, however, would provide an unjustified windfall to PSPs.

The prospective \$0.24 default rate initially set in the *Third Payphone Order* included the \$0.009 per-call allowance. *Third Report and Order* at ¶ 189.⁶ However, the Commission noted at the time that, for the Interim Period, the default compensation amount set in the order would be used only as a "starting point." *Id.* at ¶ 197. The order explained, "[w]e also anticipate adjusting the default compensation amount of the Interim Period to account for FLEX ANI costs and interest." *Id.* APCC automatically presumes that this "adjustment" can only be an increase in compensation to PSPs. In fact, Sprint understands the order to convey that the Commission would reevaluate the overall manner of interest applied to Interim Period obligations. The Commission did so here, determining that "this cost component is not applicable for interim compensation because it was calculated specifically for the four-month delay in payment for the per-call period." *Fourth Recon. Order* at ¶ 9.⁷

⁶ Sprint respectfully submits that the inclusion of the \$0.009 allowance for payment lags was wrong from the beginning and inconsistent with the Commission's long-standing ratemaking principles. The Commission generally includes an allowance in the rate base for cash working capital, based on lead-lag studies of the actual timing of cash inflows and outflows. *See, e.g.*, Section 65.820 of the Commission's Rules. Throughout these proceedings, the RBOCs and the independent PSPs have never documented what working capital they need, must less demonstrated why it should be applied to per-call payment obligations for IXCs. Working capital, therefore, can receive no consideration for payment delays. Moreover, there is no basis for giving PSPs a full return on capital investment for the entire amount of revenues they receive from per-call compensation. Those revenues do not constitute their net investment on which their return should be calculated. *See Reply Comments of Sprint Corp.* (July 27, 1998) at 24.

⁷ The *Fourth Recon. Order* explained that, unlike the Interim Period, on a going forward basis the Commission "relied on the LEC capital cost rate [11.25%] to reflect the unusual nature of billing and compensation in the payphone industry, where calls are aggregated by calendar quarter and bills are not typically paid for several months after that." *Id.* at ¶ 33.

That decision was reasonable. Unlike calculating payments for prospective periods, in calculating net amounts owed for past periods, IXCs would be able to calculate and disburse their quarterly payments owed as of the end of each quarter, rather than one quarter in arrears. Contrary to APCC's assumption (APCC Petition at 5), there would be no four-month delay during that period, because there would be no need to compile and process call data to determine the amounts owed. Sprint presumes the Commission expects IXCs to apply interest from the first of the month right after the end of the quarter (April 1 for the first quarter, for example), rather than on the per-call quarterly payment date (July 1 for the first quarter). For per-call obligations, the interest rate would accrue from the first of the following quarter, when payment became due.⁸

Of course, that means there can be no inequity. The *Fourth Recon. Order* provides a result for PSPs that is actually better than usual business payment terms. Standard industry practice is to invoice after 30 days and to expect payment 30 days after that -- for a total of 60 days after the period of service closed. Here, there would be less delay. Having interest accruing from the first day of the following quarter equates to one month being paid immediately, one month being paid after 30 days, and one month being paid after 60 days. The result is an average for the quarter of just 30 days. A 30-day payment window can hardly be seen as leaving PSPs "uncompensated or severely undercompensated" (APCC Petition at 5), particularly since the PSP, or the overpaying IXC would receive interest from the earliest date when payment could be expected.⁹

⁸ To the extent that APCC suggests confusion on this issue, Sprint agrees that clarifying the date from which interest runs may be desirable.

⁹ APCC also argues that interest cannot substitute for the \$0.009 element, because the interest applies only to the net amount owed to PSPs, after subtracting their refund obligations to IXCs. APCC Petition at 8. However, with interest accruing immediately

APCC is also wrong when it claims that IRS overpayment rates are unfairly low when applied to Interim Period payments owed to PSPs. As Sprint explained above (see pp. 2-3 and p. 6 n.6, supra), a rate based on the cost of capital is inappropriate when applied to delayed revenues, and an 11.25% rate is clearly excessive. This issue is not about rates of return on invested capital. It is about the time value of deferred revenues -- of simple moneys owed for services. The Commission correctly determined that IRS overpayment rates should apply to the Interim Period obligations. *Fourth Recon. Order* at ¶ 33. Applying an 11.25% rate would give PSPs a windfall, particularly when this inflated rate is applied to revenues, not to any identifiable capital investment. Moreover, APCC has failed to demonstrate any need for a working capital element, rather than an interest rate reflecting the time value of money, for which IRS overpayment rates are the common standard.

B. The Commission Properly Determined that Retroactive Adjustments Should Be Made Only Between Carriers and PSPs.

The APCC repeats its request that the Commission shift from PSPs the burden of handling retroactive adjustments. APCC claims that the *Fourth Recon. Order* makes independent PSPs "intermediaries for payments that should properly be made by one IXC to another." APCC Petition at 10. The Commission correctly determined that retroactive adjustments are a matter that must remain between IXCs and PSPs (*Fourth Recon. Order* at ¶ 34), and APCC's petition must be denied.

PSPs are not "intermediaries" between IXCs. PSPs are the recipients of each IXC's payments. Payphone compensation is an obligation strictly between a PSP and an

after the end of the quarter for the Interim Period's per-line obligations, there is no four-month "payment delay" to address. See also p. 6 n.6, supra.

IXC, as supplier and customer. It is not, and should not be, an IXC's responsibility to manage any PSP's retroactive adjustments with other carriers. PSPs are themselves responsible for that relationship and any accompanying burdens.

PSPs' obligations to refund overpaying IXCs can hardly be expected to "submerge" them. APCC Petition at 11. Since IXCs are responsible for tracking, it will be the IXCs, not the PSPs, that must calculate net amounts owed to or from each PSP. APCC overstates the underpayment and nonpayment problems that independent PSPs face and sees inequity where there really is none. *Id.* at 10-11.

APCC's plan is also unrealistic. It assumes that IXCs already have in place the commercial relationships necessary to handle this process. In reality, even the largest IXCs like Sprint do not deal with all other carriers, and what relationships exist do not include any arrangements for the dealings contemplated by APCC. Moreover, no single IXC can know what amount any other IXC owes to, or is owed by, any particular PSP -- much less which IXC or IXCs it should turn to for the purpose of netting out obligations. Developing new relationships for this purpose would create needless costs and uncertainties, while substantially delaying the resolution of payphone compensation. The Commission correctly concluded, when it denied APCC's proposal, that the inevitable problems associated with retroactive adjustments would be made worse "by requiring overpaying carriers and underpaying carriers to ma[k]e retroactive adjustments." *Fourth Recon. Order* at ¶ 34.

APCC's proposal would also be terribly inefficient. Rather than reducing transactions and costs, APCC's plan would serve only to increase costs, complexity, and disputes. It would not reduce the number of transactions; it would multiply them, by

requiring each IXC to conduct accountings with every other IXC on behalf of every PSP, and then to provide a final accounting thereafter with each PSP.

Finally, Sprint questions the legality of APCC's proposal. As the Commission observed, "the statute and our regulations contemplate payment relationships between carriers and PSPs, not the Commission establishing complicated intercarrier adjustments." *Fourth Recon. Order* at ¶ 34.

C. IXCs Have a Right to Offset Amounts They Are Owed by PSPs Against Payments They Make to PSPs.

APCC contends that IXCs should be prohibited from subtracting amounts they are owed by PSPs from the payments they make to PSPs. Instead, APCC wants IXCs to be compelled to pay their obligations on an ongoing basis in full and just bill PSPs for the amount they are owed for another period, "and await payment." APCC Petition at 17. The Commission should deny this request.

It is a long-established principle that parties have a common law right to offset.¹⁰ Because of their administrative efficiency, offsets are a standard practice in telecommunications industry transactions -- including international settlements and net customer billing arrangements -- just as they are throughout modern commercial life. APCC is mistaken to suggest that the "normal method by which bills are collected" requires each party to bill the other, with both paying their respective balances in full. *Id.* at 18. Like other carriers, Sprint routinely utilizes offsets, as do its suppliers and other carriers.

¹⁰ E.g., U.S. v. Munsey Trust Co., 332 U.S. 234, 239, 67 S. Ct. 1599, 1602 (1947) (noting all parties, public and private, have a common law right to offset).

Applying offsets is consistent with past Commission practice in this docket. In the *Third Report and Order* (14 FCC Rcd 2545 at ¶ 198), the Commission found that IXC's are entitled to recover overpayments they made to PSPs during the period the \$0.284 cent per-call rate was in effect. Rather than allowing IXC's to reclaim these overpayments immediately, the Commission held that the IXC's should instead await determination of their obligations for the Interim Period and offset any underpayments for that period against their subsequent overpayments. Rather than "bringing the relationship of the parties closer to a normal telecommunications business model" (*id.* at 17), APCC's strategy would impose unreasonable risks of noncollection on IXC's.

IV. THE ITC^DELTACOM PETITION SHOULD BE DENIED.

A. The Commission Has Ample Authority to Hold Small IXC's Responsible for their Interim Period Obligations.

ITC^DeltaCom's duty to pay payphone compensation arises from the statute, see 47 U.S.C. § 276(b), not the Commission's rulemaking process. Yet ITC^DeltaCom's petition contends that the Commission -- having once attempted to exempt small IXC's from the obligation to payphone compensation -- cannot now restore that liability, even though the Illinois court vacated their exemption. 117 F.3d at 565. ITC^DeltaCom claims that such action is "prohibited retroactive rate-making."¹¹ ITC^DeltaCom Petition at 2-3. For that reason, ITC^DeltaCom argues, "the Commission is legally barred from

¹¹ ITC^DeltaCom makes this argument even though it acknowledges that this action was in response to the Illinois court's reversal and vacatur of the order exempting small IXC's from payment responsibility. It argues that although the Illinois court created this "apparent gap," nevertheless "the court did not direct the Commission adopt a rule that specifically required all IXC's to pay per-phone compensation ... nor could it." ITC^DeltaCom at 4.

adopting a substitute rule for the interim period," and therefore "the rule that was in effect before the invalid rule was adopted must spring into effect." Id. at 7.

This line of reasoning is convenient for ITC^DeltaCom, but it misrepresents U.S. administrative law. The Supreme Court precedent cited in its petition actually confirms that the Commission has full authority to direct small IXCs to pay their first-year Interim Period compensation like other IXCs. The facts of Bowen v. Georgetown Univ. Hosp., 488 U.S. 203, 109 S. Ct. 468 (1988), are not "on point." ITC^DeltaCom Petition at 5. Bowen focused on a "particular statutory scheme," the Medicare Act, which the Court concluded by its unique structure and language "compels the conclusion that the Secretary has no authority to promulgate retroactive cost-limit rules" for Medicare reimbursements. 488 U.S. at 215, 109 S. Ct. at 475.

More on point here is United Gas Improvements Co. v. Callery Properties, Inc., 382 U.S. 199, 86 S. Ct. 360 (1965) (cited by ITC^DeltaCom at 6 n.13). The Court held that an agency's authority to adjust rates retroactively "is not so restricted where its order, which never became final, has been overturned by a reviewing court." It continued, "Here the original certificate orders were subject to judicial review, and judicial review at times results in the return of benefits received under the upset administrative orders." The reason for this is quite clear. "An Agency, like a court, can undo what is wrongfully done by virtue of its order." 382 U.S. at 229, 86 S. Ct. 364.

SEC v. Chenery is also instructive. 332 U.S. 194, 67 S. Ct. 1575 (1947). The Court refused to find that appellate reversal of the agency's order would "withdraw all power from that agency to perform its statutory duty" on remand. 332 U.S. at 201-02, 67 S. Ct. at 1580. Nor did the agency's error entitle the petitioner to rely on the original

order. The Court explained, "[t]he fact that the Commission has committed a legal error in its first disposition of the case certainly gave [the aggrieved party] no vested right to receive the benefits of such an order." 332 U.S. at 200-01, 67 S. Ct. at 1579. Instead, "[a]fter remand was made ... the Commission was bound to deal with the problem afresh." 332 U.S. at 201, 67 S. Ct. at 1579. The reason for this is obvious. "To hold that the Commission had no alternative in this proceeding but to approve the proposed transaction, while formulating any general rules it might desire for use in future cases of this nature, would be to stultify the administrative process. That we refuse to do." 332 U.S. at 202, 67 S. Ct. at 1580.

ITC^DeltaCom also claims that the Commission "concluded" (ITC^DeltaCom's term), given the Illinois decision, that it could not "address the court's concern that the Commission acted arbitrarily by only requiring payments from the largest IXC's, because the Commission does not maintain adequate data for those carriers with annual toll revenues under \$100 million." ITC^DeltaCom Petition at 6 n.14, quoting *Memorandum Opinion and Order*, 13 FCC Rcd 10893 at ¶ 33 (1998). That was a Bureau order, not a "conclusion" by the Commission. And on that issue, the Bureau merely acknowledged that it was not then prepared to adopt a flat-rate approach for Interim Period compensation, based on IXC's' toll revenues, both because that would not satisfy the Illinois court's concerns and because the Commission lacked information about smaller IXC's' toll revenues.

B. Small IXCs Cannot Fairly Be Exempted from their First-Year Interim Period Payment Obligations.

ITC^DeltaCom argues that it would be "inequitable and contrary to the public interest for the Commission to now impose a per-phone compensation obligation on small IXCs for the interim period." ITC^DeltaCom Petition at 1. It claims that, because the Commission initially exempted small IXCs for the first year of the Interim Period, ITC^DeltaCom "relied" on that decision. Therefore, it failed to keep records necessary to verify the compensation for which it is responsible; it failed to set aside funds for those payments; and it failed to recover those amounts from its customers. ITC^DeltaCom Petition at 2. Even if these claims were accepted at face value -- a questionable proposition¹² -- the Commission cannot properly exempt ITC^DeltaCom from its Interim Period payphone obligations, for several reasons.

First, an exemption simply cannot be squared with the court's ruling in Illinois. The court found the "administrative burdens" of handling interim compensation wholly insufficient to justify disparate treatment between one group of IXCs and another. 117 F.3d at 565.

Second, the Commission cannot exempt all small IXCs simply because one of them professes to be unable to adequately verify its financial obligations. ITC^DeltaCom fails to show that other small IXCs were similarly affected, or that they failed to receive proper notice of their potential obligations. No other small IXC petitioned for reconsideration seeking similar relief.

¹² No IXC was expected to have per-call data for the Interim Period. That is why the RBOCs and Sprint advocate use of subsequent data.

Third, ITC^DeltaCom -- like all other small IXC's -- was on notice of its obligation from the beginning. Even once the Commission sought to exempt small IXC's for "administrative convenience," the industry had ample notice that this issue in particular was among those pending appeal. Any responsible IXC would have understood that the exemption of small IXC's from the first year of Interim Period compensation could easily be reversed by the court of appeals.

The Illinois decision issued nearly five years ago.¹³ The ruling was widely publicized in industry circles. Shortly afterward, the Commission released a public notice, alerting ITC^DeltaCom to the likely removal of the illegal "small IXC" exemption and to the likelihood of "retroactive adjustments" in payphone compensation obligations.

We place the industry on notice, however, that should the equities so dictate, payphone compensation payment obligations (or the absence of such obligations) incurred by providers of interexchange services and compensation levels paid or received under our existing rules pending action on remand may be subject to retroactive adjustment in order to undo the effects of apply aspects of the current rules that were identified by the court as potentially arbitrary."

Pleading Cycle Established for Comment on Remand Issues in the Payphone Proceeding,

13 FCC Rcd 4801 at 4801 (rel. Aug. 5, 1997) (emphasis added). The public notice specifically announced that the Illinois court had ruled invalid the exemption of small IXC's from first-year Interim Period compensation. It stated, "the Commission may impose retroactive adjustments to the payment obligations and compensation levels," and

¹³ Oddly, ITC^DeltaCom does not claim it was unaware of the Illinois decision, and concedes that the court found "that the Commission acted arbitrarily and capriciously in requiring interim compensation payments only from large IXC's." ITC^DeltaCom Petition at 4.

it invited comment on how those "retroactive adjustments should be made." Id. at 4802. ITC^DeltaCom cannot rely on a proposed agency rule and ignore all other notices.

It is difficult to imagine that these developments would be lost on a carrier that operates a 9,980-mile fiber optic network, has more than 160 points of presence, and has three dozen offices in nine states. ITC^DeltaCom Petition at 2. ITC^DeltaCom has not explained why such notices and developments should have failed to register with the company. In fact, it should have been surprising to any carrier if the Commission determined anything other than that small IXCs were necessarily responsible for compensating PSPs for the full Interim Period. Any other outcome would have been an unexpected windfall. ITC^DeltaCom's liability certainly was not "something that the small IXCs had no reason to expect." Id. at 7.

V. THE WORLDCOM PETITION SHOULD BE GRANTED.

A. The Commission Should Not Utilize Inflated "Default" Estimates for Payphones Lacking Flex ANI After the Interim Period.

WorldCom asks the Commission to reconsider the default number of compensable calls for periods after the Interim Period for any payphone for which Flex ANI was not available. WorldCom Petition at 2-3. Sprint does not believe the Commission has mandated per-call compensation, or a per-line true-up, for payphones lacking Flex ANI after the Interim Period. If that was the Commission's intent, however, then WorldCom is absolutely correct that the Commission has no record basis for determining that the Interim Period default figure is the proper number to apply those payphones.

As Sprint explained in its own Petition (see Sprint Petition at 3-10), the Commission's estimated call count for the Interim Period is excessive and unreasonable. The Commission's estimate would be even more improper if it were extended to cover a compensation obligation after the Interim Period involving payphones for which Flex ANI was unavailable. As WorldCom points out, payphone usage has declined sharply since 1998. WorldCom Petition at 2-3 & attachments. Over the past year, Sprint's own payphone operation has withdrawn about one-fifth of its payphones from service because of the decline in usage.

These problems simply reiterate the importance of using actual call data for a period immediately following the Interim Period, as Sprint has consistently proposed, instead of the arbitrary per-line estimates adopted in the *Fourth Recon. Order*.

B. In any Future Effective Date, the Commission Should Allow Sufficient Time for IXC's to Complete their Accountings.

WorldCom's petition also asks the Commission to reconsider the effective date set out in the Federal Register order. Sprint agrees that the Commission should ensure any effective date allows sufficient time for carriers to handle the very difficult administrative task of determining net liability, once the Commission attempts to devise a system to allocate payphone compensation payment responsibility among carriers. The task of determining what payments are owed, and to whom, will clearly take some time.

As the Commission noted, since November 1996, there has been "substantial turnover in the telecommunications industry as companies merged, changed ownership, reorganized, changed names, or left the industry." *Fourth Recon. Order* at ¶ 34. There will be "numerous problems" determining what compensation is to be paid, and to what

parties. Id. Certainly, any effective date of the order ultimately addressing allocation and compensation must allow sufficient time to address these issues. However, as Sprint noted above (see pp. 3-4, supra), Sprint believes the effective date of the *Fourth Recon. Order* itself is not an issue that must be addressed in this reconsideration.

C. The Commission Should Confirm that the Same Intermediate Compensation Rate Applies Whether Calculated on a Per-Line or Per-Call Basis.

Sprint agrees with WorldCom that the Commission should clarify that the \$0.229 rate applies to all compensable calls during the Intermediate Period, whether a carrier paid on a per-line surrogate or on a per-call basis. WorldCom Petition at 5-6. It would be unfair to penalize carriers -- including WorldCom and Sprint -- that undertook the additional expense to quickly develop the ability to track compensable payphone calls by coding digits. For the reasons set out in Sprint's petition (see Sprint Petition at 16-17), the Commission should clarify that IXC's that have already paid Interim Compensation at the higher rate may seek a refund for the excess amounts paid.

Respectfully submitted,

SPRINT CORPORATION

John E. Benedict
H. Richard Juhnke
Suite 400
401 Ninth Street, NW
Washington, DC 20004
202-585-1910

Dated: May 1, 2002

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing COMMENTS OF SPRINT CORPORATION in CC Docket No. 96-128 was sent by electronic mail or U.S. First Class Mail, postage prepaid, on this the 1st day of May, 2002 to the following parties.

 /s/
Christine Jackson

ELECTRONIC MAIL

Dorothy Attwood, Chief
Wireless Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Tamara Preiss, Chief
Pricing Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Lynne Milne, Esq.
Pricing Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

ELECTRONIC MAIL AND
U.S. MAIL

Qualex International
Room CY-A257
445 12th Street, SW
Washington, DC 20554

U.S. FIRST CLASS MAIL

Michael K. Kellogg, Esq.
Aaron M. Panner, Esq.
Kellogg, Huber, Hansen, Todd &
Evans, P.L.L.C.
1301 K Street, Suite 1000 West
Washington, DC 20005
Counsel for RBOC Coalition

Albert H. Kramer, Esq.
Robert F. Aldrich, Esq.
Robert N. Felgar, Esq.
Dickstein Shapiro Morin &
Oshinsky LLP
2101 L Street, NW
Washington, DC 20037-1526
Counsel for American Public Communications Council

Robert J. Aamoth, Esq.
Steven A. Augustino, Esq.
Randall W. Sifers, Esq.
Kelley Drye & Warren, LLP
1200 19th Street, NW, Suite 500
Washington, DC 20036
Counsel for ITC^Delta Com

Lawrence Fenster, Esq.
WorldCom, Inc.
1133 19th Street, NW
Washington, DC 20036